No. 13392

In the UNITED STATES COURT OF APPEALS for the Ninth Circuit

WESTSIDE FORD, INC., a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM ORDER ENFORCING ADMINISTRATIVE SUBPOENA

BRIEF FOR APPELLANT

BOGLE, BOGLE & GATES
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Attorneys for Appellant.

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BRIEF FOR APPELLANT

I. STATEMENT OF THE CASE

Subsequent to the issuance by appellee of an administrative subpoena *duces tecum* (Tr. 5) pursuant to the provisions of Section 705(a) of the Defense Production Act as amended, 50 App. USCA § 2155(a), 64 Stat. 816, 65 Stat. 139, appellee filed a motion in the District Court for the Western District of Washington under Section 705(a) of said

Act for an order requiring appellant, through its President, to appear, testify and produce documents (Tr. 3). Appellant filed objections and answer to the said motion (Tr. 13) and on April 16, 1952, the District Court entered its Order Enforcing Administrative Subpoena (Tr. 35); from which appeal is taken to this Court.

Appellant is engaged in the sale of new automobiles. Inquiry as to appellant's pricing practices was first made by O.P.S. Agent Freeze on April 26, 1951, and fully answered (Tr. 22). Further investigation was made by O.P.S. Agent Hartwick during June, 1951, at which time appellant furnished the said agent copies of the base period (December 19, 1950, to January 26, 1951) price schedule, items included in appellant's ceiling prices, and invoices for inspection (Tr. 22).

Further information was supplied at the request of one Nelson on July 24, 1951 (Tr. 23).

On March 11, 1951, O.P.S. Agents Colman and Apstein requested examination of appellant's records regarding base period prices and new car prices following the base period. Appellant furnished said agents office space together with free and complete access to any and all records and invoices requested by them concerning sales and service of new automobiles during the calendar years 1950, 1951 and 1952 (Tr. 23). This investigation continued for a period of ten days (Tr. 12, 23).

Appellee then demanded permission, on or about March 25, 1952, to remove and microfilm or photostat all of appellant's records pertaining to sales of new automobiles for a period of fifteen months (Tr. 8, 24). This question was referred to counsel for appellant (Tr. 8, 24).

At no time did appellant or any employee of appellant refuse any agent or employee of the O.P.S. access to its premises or records (Tr. 24).

Appellee's request to microfilm or photostat appellant's records was declined by counsel for appellant and said refusal was in direct response to this specific request and not in response to any request for inspection of premises or records (Tr. 26). Appellee's subpoena *duces tecum* was thereupon issued on April 26, 1952 (Tr. 5), which appellant declined to obey. Further proceedings were had as set forth above.

Appellee's motion for enforcement (Tr. 3) was supported only by the affidavits of Nelson (Tr. 8), Hartwick (Tr. 9), Binns (Tr. 10), and Colman (Tr. 12). At no time was any Inspection Authorization served upon appellant (Tr. 24). At no time was any determination of scope or purpose served upon appellant other than the purported determination of scope and purpose contained in and attached to the affidavit of Binns served upon counsel for appellant on the day of hearing of the motion for enforcement (Tr. 28).

Appellant urges error in the issuance of the Order Enforcing Administrative Subpoena (Tr. 35).

II. QUESTIONS PRESENTED

1. Was the administrative subpoena *duces tecum* issued March 26, 1952, invalid because

(a) There was a failure to define the scope and purpose of the inspection, investigation or inquiry to be made,

(b) There was a failure to advise or serve upon appellant any such definition of scope and purpose,

(c) There was a failure to serve upon appellant an Inspection Authorization prior to the service of said subpoena?

2. Was either the administrative subpoena *duces tecum* issued March 26, 1952, or the Order Enforcing Administrative Subpoena entered April 16, 1952, improper because

(a) It authorized the inspection of documents immaterial and irrelevant to this or any proper investigation, inspection or inquiry to be made,

(b) It was so vague in its requirements as to be an attempted unreasonable search and seizure prohibited by the Fourth Amendment,

(c) It was too vague and uncertain in its requirements to be capable of enforcement or did

not designate documents authorized to be inspected with that degree of certainty required by law?

3. Was the District Court Order Enforcing Administrative Subpoena entered April 16, 1952, or any part thereof, invalid because

(a) It exceeded the scope of the pleadings, prayer and record before the court,

(b) It authorized the photographing of appellant's records,

(c) It constituted an unreasonable and unlawful harassment of appellant?

4. Did the District Court Order Enforcing Administrative Subpoena, of April 16, 1952, deny appellant the due process of law required by the Fifth Amendment by authorizing on-premises inspection after appellant was required to defend a motion for off-premises production of documents?

5. Was the cumulative effect of administrative improprieties above stated such as to render the District Court's Order Enforcing Administrative Subpoena erroneous?

III. SUMMARY OF ARGUMENT

The court below not only granted enforcement of an administrative subpoena invalid when issued, but also entered an enforcement order infringing

upon the constitutional and legal rights of appellant and sanctioning oppressive and illegal action by an administrative agency.

The subpoena was invalid when issued because the administrative agency had not complied with the prerequisites established by statute and by the procedural regulations and delegations of authority issued by the agency itself. No definition of scope and purpose was made by the responsible administrative official, nor was any such definition served upon or communicated to appellant. Further, the pattern of enforcement established by statute and recognized by regulation was not followed by the agency in that the subpoena was not preceded by an inspection authorization.

An issue of the materiality and relevancy of information sought is always before the court in a proceeding to enforce an administrative subpoena. Since the scope and purpose of this investigation were not defined, that issue could not have been resolved by the court below. Notwithstanding this, the enforcement order grants access to information completely irrelevant even to appellee's alleged purpose of the investigation.

Both the supoena and the enforcement order are so broad in scope and vague in terms that they violate the constitutional prohibitions against unreasonable searches and seizures, and both fail to spe-

cify the documents sought with reasonable particularity as is required by law.

Contrary to the provisions of the Emergency Price Control Act of 1942, the Defense Production Act of 1950 does not authorize the copying of records. Thus the court below erred in permitting the photostating or copying of records inspected.

The entire proceeding below, administrative and judicial, is marked by abuse of discretion and administrative oppression. In granting an order permitting on-premises inspection in response to an application for off-premises production the court invaded the province of the executive department of the government, ignored the "fair play" requisites of procedural due process, and exceeded the scope of the prayer and record before it. Unreasonable harassment of a private citizen by a government agency is sanctioned by the enforcement order; both law and sound policy dictate that the cumulative effect of such administrative improprieties is to require a reversal of the enforcement order granted by the court below.

IV. ARGUMENT

A. THE ADMINISTRATIVE SUBPOENA WAS NOT ISSUED IN CONFORMITY WITH THE REQUIREMENTS OF THE DEFENSE PRODUCTION ACT AND APPLICABLE REGULATIONS THEREUNDER.

1. The Administrative Subpoena Was Invalid When Issued for Failure to Serve an Inspection Authorization on Appellant Prior Thereto.

50 App. USCA 2155(a) has been amplified by regulations EP-1, 16 F.R. 2496 and EP-2, 16 F.R. 2496. The statute, together with these regulations, discloses a comprehensive pattern or scheme for obtaining information and documents under the Defense Production Act of 1950, as amended.

Under the statute, the President may "by regulation, subpoena, or otherwise" obtain information. In so doing, he may "make such inspection of the books, records and other writings, premises or property of * * * any person as may be necessary or appropriate in his discretion, to the enforcement or the administration of this Act * * *"

The intent of the statute is reflected in the regulations. EP-1 provides for an "inspection authorization" requiring any person to permit the duly authorized representative of the O.P.S. to inspect books, records and other writings in his possession and control at the place where such person keeps them, and to inspect the premises and property of the person.

In the event that the inspection authorization is not honored, the O.P.S. may then have recourse to the subpoena procedure described in EP-2. It would be of little use to resort to subpoena in a case where

the information might have been obtained by means of an inspection authorization. It would be unduly burdensome on the witness to be forced to appear and produce records when the records might be more easily inspected at the witness' place of business.

Bowles v. Sachnoff (D.C.W.D. Pa. 1946), 65 F. Supp. 538, dealt with the admissability of evidence obtained over objection to an investigation authorization. The court said:

> "However, if the person governed by any order or regulation of the Office of Price Administration does not voluntarily consent, or refuses to comply with the request to make available the records in connection with his business for the purpose of inspection, that said investigator, under said circumstances, has no right or authority to examine or investigate the records. If any information is secured under the circumstances just mentioned which gives rise to any claim or prosecution, in my opinion, said evidence would be subject to a motion to suppress since it would amount to the person concerned being required to waive his constitutional immunities against self-incrimination. This is true since a subpoena duces tecum was not issued.
>
> "If the circumstances just stated arise, the Office of Price Administration has ample authority existing to issue a subpoena duces tecum to compel the person concerned to produce or make available for inspection the records in question."

From this it appears that the court recognized the logic of resorting to subpoena only after a refusal to comply with the investigation authorization. That the O.P.S. also recognizes this pattern is indicated

by *In re Bleichfeld Bag & Burlap Co.* (D.C.W.D.N.Y., 1952) 105 F. Supp. 162 where an inspection authorization containing on its face a determination of scope and purpose, was served prior to the subpoena.

Appellee has nowhere shown that any inspection authorization was issued. It should be noted, as set out in the affidavit of William Bishop (Tr. 21), that agents of the O.P.S. were granted access to appellant's books and records at appellant's place of business from time to time, and at one instance over a period of ten days. There is no indication that appellant would have declined reasonable inspection under an appropriate authorization. Appellant submits that appellee's subpoena and application for an enforcement order were premature in view of appellee's failure first to attempt to obtain the required data by means of an inspection authorization.

2. The Administrative Subpoena Was Invalid for Failure to Define the Scope and Purpose of the Investigation as Required by Law; And for Failure to Inform Appellant of the Scope and Purpose of the Investigation.

a. *Scope and purpose must be defined.*

The importance of a definition of the scope and purpose of the investigation to be aided by resort to subpoena is made clear by the emphasis upon this point in the statute and regulations.

50 App. USCA 2155(a) makes this requirement:

> "The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority * * *"

EP-1, 16 F.R. 2496, previously referred to, requires as a prerequisite to validity that:

> "Inspection authorizations shall specify the person to be served, the title or official position of such person, the evidence sought to be adduced, its general relevancy, and the scope and purpose of the investigation, inspection or inquiry to be made."

Similarly, EP-2, 16 F.R. 2496 contains this requirement:

> "Subpenas shall be issued only after the scope and purpose of the investigation, inspection or inquiry to be made have been defined by the Assistant Director of Price Stabilization for Enforcement (Director of Enforcement), Regional Enforcement Director or District Enforcement Director of the Office of Price Stabilization having jurisdicition over such investigation, inspection, or inquiry * * *"

Finally, a determination of scope and purpose is required by Delegation of Authority 4, Supplement 1, 16 F.R. 4359, which states that the District Enforcement office has the power:

> "To sign and issue Subpenas requiring any person to appear and testify or to appear and produce documents, or both, at any designated place."

But the delegation of authority is conditional.

> "Such Subpenas, Inspection Authorizations, and Request Letters will be utilized only after the scope and purpose of the investigation, in-

spection or inquiry to be made have been defined by * * * the District Enforcement Director * * * in whose area as above defined such investigation, inspection or inquiry is to take place."

b. *No adequate definition of scope and purpose was made by the District Enforcement Director.*

In the light of the preoccupation of both statute and regulations with adequate definition of the scope and purpose of the investigation, we may now consider the subpoena actually served by appellee, and appellee's purported compliance with these requirements.

The subpoena (Tr. 5-6) requires appellant to appear and "to give testimony concerning SR 5 to GCPR and CPR 83 * * *" and further to produce for inspection "Records and invoices relative to all sales of new automobiles sold from December 19, 1950, to present date, including records of service performed on said automobiles."

This subpoena was served upon appellant on March 26, 1952. It was accompanied by no definition of scope or purpose of the inquiry.

On April 3, 1952, there was served and filed the affidavit of John H. Binns, District Enforcement Director (Tr. 10-11), which states that "affiant deemed it necessary and appropriate to the enforcement of the Defense Production Act of 1950, as amended * * *" to take testimony and obtain information from appellant's president.

The hearing on the Motion For Order Requiring Respondent to Appear, Testify and Produce Certain Documents was set for April 14, 1952. It was only on the day of this hearing that respondent served upon counsel for appellant the supplemental affidavit of Binns (Tr. 28-30) with its purported determination of purpose and scope attached thereto (Tr. 31-33).

What was that determination of purpose and scope contained in and attached to this affidavit? The purpose and scope was purportedly to determine whether appellant had been complying with Para. 3 of SR 5 to GCPR, 16 F.R. 1769, and CPR 83, 16 F.R. 10594. There follows an absolutely unlimited authority to inspect any documents required to be kept by the Defense Production Act of 1950, interview any person or persons who have "or are believed to have relative or pertinent information," inspect premises and property and make "Such other or further investigation, inspection, or inquiry as the district enforcement director may, in the exercise of his discretion, deem necessary or appropriate."

Does such a history show a compliance with either the letter or the spirit of the statute and regulations?

Binns' affidavit dated April 3, 1952 (Tr. 10-11) in which he deemed it "necessary and appropriate" to take testimony is certainly no definition of scope and purpose. If it be admitted that the investigation

is both necessary and appropriate, such a finding does not indicate either the purpose or the scope thereof.

Respondent must therefore rely on the affidavit of Binns dated April 14, 1952 (Tr. 28-30) and its attached determination (Tr. 31-33) to show that there has been an adequate determination of scope and purpose.

It is true that the determination of April 14 particularizes SR 5 by referring to paragraph 3 thereof; while the subpoena had made a blanket reference to SR 5. However, reference to SR 5 will show that paragraph 3 contains all pricing provisions relating both to new automobiles, extra, special, or optional equipment and all other charges in connection therewith. The other paragraphs relate to used cars or contain definitional or administrative provisions.

What, then, is the scope and purpose of the investigation if appellee's determination is to be relied upon? The scope is nothing less than all transactions relating to new cars in which appellant, a new car dealer, engaged, and the purpose is to determine if appellant has violated any applicable price stabilization rule or regulation. The effort is thereupon made to subpoena *all* records of appellant, inspect all property, and take any testimony deemed necessary by the District Enforcement Director.

Appellee has, in actuality, evaded the very purpose and meaning of the statute and regulations by

incorporating in his determination of scope and purpose all pricing regulations under which appellant was doing business. He has in effect said, "I will investigate all of your records to see if you are violating any price ceiling." As to appellant, the definition was as broad as the statute.

A study of CPR 83 will illustrate the complexity of automobile price ceilings. A method was set out for pricing new cars, optional equipment and new products. The following are elements which were included in ceiling prices: Transportation charges, taxes, delivery and handling, other base period charges, installation charges. Methods were provided for determination of ceilings on these items. CPR 83 further contained prohibitions against price-related policies, including: requirement of time payments or financing; requirement of purchase of optional equipment; requirement of trade-in; grant of less than reasonable allowance for trade-in; rental or lease agreement with option to purchase totaling more than ceiling price; increase in financing charges to evade ceiling price.

Let us assume that the appellee has reason to believe a dealer is in violation of ceiling price regulations for delivery and handling charge. It would then be proper for appellee to determine the purpose to be the investigation of the delivery and handling charge of that dealer. The scope would be particularized by a listing of those documents reasonably

necessary to determine if the ceiling price for handling and delivery were being violated.

To summon appellant to testify and produce documents relating to blanket provisions governing his entire principal business is to evade the whole meaning of the statutory requirement of determination of scope and purpose.

The question may be raised how appellee can possibly determine what documents are vital to the scope of his investigation, purpose having been determined, if it is not familiar with the business, records, and files of the parties investigated. But this argument is of no avail to appellee. The testimony is uncontroverted, as set forth in the affidavit of Bishop (Tr. 23), that agents of appellee, for a period of ten days after March 11, 1952, were given full and free access to any and all records and documents requested and were furnished office space to aid in their investigation.

It was only when these agents demanded permission to remove and photostat all its records that appellant sought the advice of counsel.

Thus, appellee should have been amply informed, not only of the nature of appellant's records, but also of any particular type of alleged violation which it sought to investigate. Appellee has failed or refused to define the scope and purpose of its investigation and its administrative subpoena—a failure or refusal which was plainly within its power

to correct and which is equally plainly violative of the statutory mandate that such be done.

c. *Appellant was not timely advised of or served with any definition of scope and purpose.*

The manner and time of service of the affidavit of Binns with its attached purported definition of scope and purpose is of vital interest. As previously noted, it was served upon counsel at the date of hearing. Of what use is a determination of scope and purpose if it remains in the files of appellant? A principal purpose should be to advise the party subpoenaed, so that he may know the scope and purpose of the investigation and, hence, the testimony and documents required in repsonse thereto. Appellant at no time during these proceedings knew, nor does appellant today know, the actual purpose of this investigation.

That the O.P.S. recognizes the necessity of informing the party of the scope and purpose of the investigation is illustrated by the requirement of EP-1 at Section 3 that:

> "Inspection Authorizations shall specify the person to be served, the title or official position of such person, the evidence sought to be adduced, its general relevancy, and the scope and purpose of the investigation, inspection or inquiry to be made."

Section 4 of EP-1 further requires service of the inspection authorization upon the party.

The standards required of an inspection authori-

zation must be equally applicable to the subpoena process.

B. THE ADMINISTRATIVE SUBPOENA AND ENFORCEMENT ORDER VIOLATE CONSTITUTIONAL AND LEGAL REQUIREMENTS OF MATERIALITY, RELEVANCY AND PARTICULARITY OF DESCRIPTION.

1. The Enforcement Order Authorizes the Inspection of Documents Immaterial and Irrelevant to This or Any Other Possible Proper Investigation.

a. *There can be no determination of materiality or relevancy in the absence of a determination of scope and purpose.*

The importance of a determination of scope and purpose is made clear when one considers the problem of the extent to which inspection or production of documents may be allowed. The relevancy and materiality of the information sought can only be determined with reference to the scope and purpose of the investigation.

It has always been held that, on application for enforcement of a subpoena, the issues of relevance and materiality of information sought are factual issues to be determined by the court. In the leading case of *Hale v. Henkel,* 201 U.S. 43, 50 L. ed. 652, 666, the Supreme Court said:

> "Doubtless many, if not all, of these documents may ultimately be required, but some

necessity should be shown, either from an examination of the witnesses orally, or from the known transactions of these companies with the other companies implicated, or some evidence of their materiality produced, to justify an order for the production of such a mass of papers."

Bowles v. Beatrice Creamery Co. (D.C. D. Wyo., 1944), 56 F. Supp. 805, involved an inspection authorization rather than a subpoena, but the principle is applicable also to a subpoena. The court said:

"The point to be accentuated would be that the rights of the government go only to such documents as are relevant to the matter under investigation and that disclosure thereof cannot be compelled without some showing of the relevancy."

The decision was reversed on other grounds in *Bowles v. Beatrice Creamery Co.* (C.A. 10, 1944), 146 F.(2d) 774. But the court stated:

"There are cogent reasons why production and inspection should only be compelled by lawful process. Where the production is in response to lawful process, the owner of the books and papers is afforded protection by the limitations which the law imposes with respect to lawful process. Such process must state the subject of the inquiry, must particularly describe the books and papers so that they can be readily identified, and must limit its requirements to books and papers that are relevant to the inquiry. In other words, such process must confine its requirements within the limits which reason imposes in the circumstances of the particular case. Moreover, the person to whom such process is addressed may challenge its legality before being compelled to respond thereto."

In *Provenzano v. Porter* (C.A. 9, 1946), 159 F.

(2d) 47, there was a subpoena and an order enforcing, which was affirmed. The court made an express finding of the relevance and materiality of the information sought:

> "Their probable materiality in such an inquiry appears both on the face of the subpoena and from the allegations of the petition."

Goodyear Tire & Rubber Co. v. N.L.R.B. (C.A. 6, 1941), 122 F.(2d) 450, 136 A.L.R. 883, was a case involving a subpoena *duces tecum* issued by the National Labor Relations Board pursuant to section 11(1) of the National Labor Relations Act, 29 U.S.C.A. 151 *et seq.* A large mass of records was sought by subpoena *duces tecum.* The circuit court found that there was a serious question as to the relevance of a certain card index to the purposes of the investigation. It, therefore, refused to affirm the enforcement order with regard to the card index and remanded the proceeding to the district court for further proceedings. The court stated that the issue of relevance is always open to contention; that the contention raises an issue of fact to be determined by the court. This is, therefore, a flat holding that relevance and materiality are not, as contended by appellee, left to the sole discretion of the administrative agency.

The *Goodyear* case is of especial significance because it is adopted by the court in *Bowles v. Cherokee Textile Mills* (D.C.E.D. Tenn. 1945), 61 F. Supp.

584, as the basis for a parallel decision under the Emergency Price Control Act of 1942. This was an action brought to enforce a subpoena *duces tecum* issued by the Price Administrator. The contention was squarely made by the Administrator:

> "* * * that once he has determined administratively that the matter called for in the subpoena is material to the subject under consideration, and has caused the subpoena to issue, that the court has power to enforce compliance, but has no jurisdiction to review the soundness of the administrative determination of materiality. In other words, that his broad powers to investigate, looking to the fixing of prices, gives him also the exclusive right to determine finally whether the contents of the record, paper or document called for is material; that the statute so provides."

The court disposed of the issue by reference to the *Goodyear* case, stating:

> "It is my opinion, after considering the cases cited by counsel which bear upon the question, that it was squarely before the Circuit Court of Appeals for the Sixth Circuit in *Goodyear Tire & Rubber Co. v. National Labor Relations Board,* 122 F.(2d) 450, at page 453, 136 A.L.R. 883, in which the court said, in part: 'The statute does not require the District Court to issue the order, but simply gives it jurisdiction to issue. The enforcement of the subpoena is thus confided to the discretion of the District Court, which is to be judicially exercised. We think that the review in this case extends no further than the determination as to whether or not there was an abuse of its discretion. Applying this rule, we think that it was open to the company to contend that the documents called for do not relate to the particular matter in ques-

> tion; that this contention made in the answer raises an issue of fact for determination by the court, and if determined in its favor, that the application of the Board as to documents found not so to relate should be dismissed upon the merits.' "

The conclusion of the court was as follows:

> "* * * My conclusion is that the court has jurisdiction to determine the question whether the matter called for in the subpoena is material to the determination the administrator is authorized to make, but before the aid sought by the administrator will be granted, it must appear from evidence that the papers, documents or evidence which are sought are material to a determination of the matter under investigation.
>
> "I think this action will dispose of the motion to strike portions of the answer, since the narrow question is whether the administrator is given sole authority to determine relevancy and materiality. I do not think the Congress so intended."

This review of the cases makes it clear that there is always before the court the issue of materiality and relevancy; and that this issue may not be foreclosed by an administrative officer.

But the Order Enforcing Administrative Subpoena (Tr. 35) is supported by no finding of materiality and relevancy of information sought; and such could not be possible where there has been a failure to determine the scope and purpose of the investigation.

b. ***The enforcement order authorizes the inspection***

of documents irrelevant and immaterial to any inquiry under SR 5 to GCPR and CPR 83.

In addition, the court below ordered the inspection of documents completely irrelevant and immaterial even under the terms of the invalid definition of scope and purpose made by the O.P.S. Those are the following documents, in the words of the Order (Tr. 36):

> "* * * the following designated new car records for the period December 19, 1950, to the present date which are in his possession, custody, or control: * * * repair orders, records which indicate cost of labor and materials expended in the preparation and conditioning of new cars for delivery, * * *"

Since the terms of the definition of scope and purpose asserted by the District Director relate to "Para. 3 of SR 5 of GCPR and CPR 83" (Tr. 29), we must look to those regulations to determine relevancy and materiality.

Paragraph 3 of SR 5 to GCPR provided in substance that the ceiling price on new automobiles was the sum of the following items:

(a) the manufacturer's suggested list price for the automobile in effect on January 26, 1951,

(b) the manufacturer's suggested list price for extra, special or optional equipment plus the dealer's ceiling price for installation under GCPR,

(c) transportation costs,

(d) Federal excise taxes charged the dealer,

(e) state and local taxes imposed upon the dealer,

(f) the dealer's ceiling price under GCPR for preparing and conditioning the new automobile for delivery,

(g) the dealer's ceiling price under GCPR for any other services performed,

(h) increases in the manufacturer's price to the dealer occurring since March 1, 1951, plus a percentage margin thereon.

Clearly any information regarding the cost to appellant of labor and materials used in the preparation and delivery of new cars is completely irrelevant to an investigation of compliance with paragraph 3 of SR 5 to GCPR. The only relevant evidence concerning preparation and conditioning would be that amount *charged* by appellant for preparation and conditioning during the December 19, 1950-January 26, 1951, base period established in the GCPR, for that charge would be the ceiling price under GCPR and the maximum amount allowed for item (f) in paragraph 3 of SR 5 to GCPR.

Just as clearly, no information appearing on new car repair orders can be relevant to this investigation. The repair orders are used merely to show cost estimates for the benefit of appellant's accounting system, *i. e.,* how much shop labor and material costs should be assigned to new car sales (Tr. 19-20).

This information is also completely irrelevant to an investigation of compliance under CPR 83. Section 2 of that regulation provided as the ceiling price of a new automobile the sum of the following elements:

(1) the "basic price," a dollar figure set by the O.P.S.,
(2) a dollar charge for extra, special or optional equipment set by the O.P.S.,
(3) transportation cost,
(4) federal excise taxes charged the dealer,
(5) state and local taxes imposed upon the dealer,
(6) preparation and conditioning charge prevailing from January 26, 1951, to February 24, 1951, but not more than 5% of the basic price.
(7) GCPR ceiling price for other services performed.

Here, again, it is obvious that the cost to appellant of labor and materials expended in preparing and conditioning new cars for delivery is a matter completely irrelevant to a question of compliance under CPR 83. The regulation simply does not touch upon appellant's costs. Nor does it relate in any manner to appellant's allocation of new car repair expenses on its books and records.

This being the case appellant submits that that portion of the order of the District Court objected to above must be stricken.

Furthermore, the court below ruled that no documents should be produced which are not within the record-keeping requirements of the regulations, and counsel for appellee agreed to this (Tr. 77). SR 5 to GCPR preserves the record-keeping requirements of GCPR. Section 16(a) of GCPR requires only the keeping of "sufficient records to establish the latest net cost incurred . . . prior to the end of the base period in purchasing the *commodities*" delivered or offered for delivery during the base period. No requirement appears with regard to records of the cost of services, in sharp distinction to the first part of that section, which requires records of prices charged for "commodities *or services*." Section 16(b) of GCPR nowhere requires a seller to maintain cost records except with regard to commodities or services not delivered or offered for delivery during the base period, a situation not pertinent to this case. In other words, the documents to which objection is made are simply not required to be maintained by SR 5 to GCPR. Section 13 of CPR 83 required only that the customer invoices be maintained plus the records of prices and charges for sales of new cars, and that the records required by Section 16(b) of GCPR up to the effective date of CPR 83 (October 15, 1951) be preserved. According to the agreement of counsel for appellee made in open court (Tr. 77), appellee is entitled only to inspect customer invoices and other records of prices

charged, and not to the cost records specified in the order of the court below. Price records are the only records required to be maintained by the regulations involved.

Finally, the district court ordered the inspection of documents completely immaterial and irrelevant to *any possible proper investigation, inspection or inquiry that could have been made under the Act.* Information concerning the cost of labor and materials expended by appellant in the preparation and conditioning of new cars for delivery *after* July 26, 1951, the cut-off date in the Capehart Amendment, 50 App. USCA 2102(d)(4), which permits upward price adjustments equal to cost increases up to that date, is beyond the purview of the Act and thus outside the scope of the investigative powers of the President.

2. Both the administrative subpoena and the enforcement order are so vague that they authorize an unreasonable search and seizure in contravention of the Fourth Amendment.

a. The administrative subpoena.

Reference has been made to the quantitative mass of materials required to be produced by appellee's subpoena and the lack of relevancy of a large portion of these materials to the scope of any inquiry under SR 5 to GCPR and CPR 83. Of course, in the absence of any determination of scope and purpose

of investigation, it is hardly possible to determine what materials are relevant and material.

A subpoena lacking any limitation of scope or purpose, vague and indeterminate in its description of testimony and material sought, has been held an unreasonable search and seizure contrary to the Fourth Amendment.

In *Hale v. Henkel,* 201 U. S. 43, 50 L. ed. 652, it was attempted to subpoena all records of respondent corporation of dealings, correspondence, contracts, etc., with six other firms.

The court held that a subpoena which was unduly broad, lacking in particularity and relevancy, might be an unlawful search or seizure under the Fourth Amendment, even though the court denied to corporations the protection of the provisions against self-incrimination contained in the Fifth Amendment. The court said:

> "We are also of the opinion that an order for the production of books and papers may constitute an unreasonable search and seizure within the 4th Amendment. While a search ordinarily implies a quest by an officer of the law, and a seizure contemplates a forcible dispossession of the owner, still, as was held in the *Boyd Case,* the substance of the offense is the compulsory production of private papers, whether under a search warrant or a *subpoena duces tecum,* against which the person, be he individual or corporation, is entitled to protection. Applying the test of reasonableness to the present case, we think the *subpoena duces*

tecum is far too sweeping in its terms to be regarded as reasonable."

Enforcement of a subpoena may be declined where the subpoena is, in terms, vague and unreasonable. Such vagueness may go to the description of the documents or testimony sought; or to the purpose for which it is to be used. The latter is closely related to the issue of materiality and relevancy discussed above.

EP-2 requires the documents sought by subpoena to be described "with reasonable particularity." The principle was laid down in *Hale v. Henkel,* supra:

> "Indeed, it is difficult to say how its business could be carried on after it had been denuded of this mass of material, which is not shown to be necessary in the prosecution of this case, and is clearly in violation of the general principle of law with regard to the particularity required in the description of documents necessary to a search warrant or subpoena."

As the court stated in *Bowles v. Abendroth,* (C. A. 9, 1945), 151 F.(2d) 407:

> "Enforcement may, of course, be declined if the administrative subpena is vague or unreasonably burdensome . . . or if the proposed inquiry is not authorized by statute, * * *"

Porter v. Clayton Packing Co. (D.C.E.D.N.Y., 1946), 65 F. Supp. 825, is an example of reasonable limitation of administrative subpoena, severely reducing the quantity of records sought.

The present subpoena refers merely to "records

and invoices relative to all sales of new automobiles sold from December 19, 1950, to present date, including records of service performed on said automobiles." The affidavit of Bishop (Tr. 14-20) makes clear the extent of these records, and their relation to the office organization and procedures of respondent. Whether records or invoices sought are all necessary to petitioner's purpose, such as it may be, does not appear.

As stated above, not only has no determination been made of the scope and purpose of this inquiry, but the confusion with regard to its scope and purpose has not been clarified by appellee. Such confusion makes the subpoena vague as to its purposes and, therefore, unreasonable as to respondent.

Vagueness as to purpose is combined with vagueness as to documents sought. The ten-day investigation by OPS agents most certainly familiarized them with the books and records kept by appellant. It is in the light of this information that the language of the administrative subpoena is wholly devoid of any particularity and leaves appellant to respond at its peril.

b. The enforcement order.

The Order of the District Court enforcing the administrative subpoena contains no finding that the documents sought were necessary, material or relevant to the purpose of the inquiry. The order does

not find what the purpose or scope of the inquiry may be. However, the order does first list *by name* certain documents to be produced.

The objection here is to the next part of the order reading as follows (Tr. 36): (Italics added)

> "* * * and *any other records* not specified above which contain the following information as to new cars sold:
>
> (a) Date of sale.
> (b) Make of automobile, model, year and body style, motor number and serial number.
> (c) Basic price, transportation charge, preparation and conditioning, Federal excise tax, charge for extra, special, or optional equipment.
> (d) State and local taxes.
> (e) Charge for other services or items of equipment requested.
> (f) Finance charges, name of finance company, method of payment and amount of cash received;"

All tests of relevancy, materiality, scope, purpose and reasonable particularity of description are dispensed with by this order. Appellant is not informed of what records he must produce. He is simply told, at peril of contempt, to produce anything and everything which may contain any of the information listed. This demand for information regarding new cars could not be broader. Once more, the whole statutory and regulatory scheme for the control of administrative subpoenas has been disregarded.

It should be noted first that the records specifically designated by name in the order will cover all

the information sought by this "catch-all" provision, and the specific designation of records avoids uncertainty and ambiguity. The affidavit of Bishop (Tr. 14-20), and the Exhibits thereto, are ample evidence of this. In fact, counsel for appellee stated in argument that the affidavit of Bishop and accompanying exhibits were used in drawing up the order. (Tr. 87-88).

Secondly, it should be noted that the affidavit of Bishop and accompanying exhibits describe and exemplify the records kept by appellant with such detail that any such "catch-all" provision is completely unnecessary. Appellee and the court know the precise information desired and can specify the documents needed with precision by reference to the information supplied by appellant through Bishop.

Thirdly, it must be remembered that failure to obey the court order lays appellant open to a citation for contempt of court. Appellant should not be required to hazard a needless risk in this connection. Where the records required are capable of precise and exact designation, and both appellee and the court are in possession of a detailed description of the records, the order entered by the court should be precise.

The legal principles governing this question are too well known to require extensive elaboration. The Court must describe the documents to be produced

with reasonable particularity. *Oklahoma Press Publishing Co. v. Walling,* 327 U.S. 186, 90 L. ed. 614; *Hale v. Henkel,* supra. In view of the fact that the district court had before it a detailed description of the business records maintained by appellant in connection with new car sales, it is submitted that the district court failed to describe documents in terms of *reasonable* particularity when it included the "catch-all" provision objected to. It is apparent that this error is prejudicial to appellant. Obviously appellant maintains documents such as copies of routine correspondence which are not intended to be subject to production but which might contain information concerning one or more of the items specified in the "catch-all" provision. Yet if appellant does not completely denude its files of all papers bearing any information whatsoever regarding new cars sold, it runs the risk of a contempt citation. This cannot be said to be a reasonable requirement in view of the alternatives and information available to the court below.

C. THE COPYING OF BUSINESS RECORDS IS NOT AUTHORIZED BY THE DEFENSE PRODUCTION ACT OF 1950.

50 App. USCA 2155 (a) nowhere authorizes the copying or photographing of business records or other documents. In sharp contradistinction, Section 202(b) of the Emergency Price Control Act of

1942 authorized the Administrator to require any person to "permit the inspection *and copying* of records and other documents * * *" (Italics added.)

This omission to authorize copying in the 1950 Act must be deemed significant, since the two sections follow much the same pattern otherwise. Furthermore, 50 App. USCA 2155(c) provides that off-premises inspection shall not be required if the subject of the inspection furnishes certified copies of the documents sought to the President or stipulates as to their contents. By this section Congress recognized that copies may not be made by the O.P.S., and provided an incentive to the subject of the inspection voluntarily to furnish copies in order to avoid off-premises production for inspection. Thus the statutory scheme is complete. The O.P.S. is not authorized to copy business records, but a method is provided whereby the voluntary furnishing of copies to the O.P.S. will avoid unwanted interference with normal business operations. If the statute is construed to authorize the copying of documents by the O.P.S., then Section 2155(c) is without meaning.

Appellant submits that the part of the District Court Order permitting the copying or photographing of appellant's records is invalid.

D. THE ENFORCEMENT ORDER SANCTIONS OP-

PRESSIVE AND UNCONSTITUTIONAL ADMINISTRATIVE PROCEDURE.

1. The order denies appellant the due process of law required by the Fifth Amendment to the Constitution of the United States by authorizing on-premises inspection of documents after appellant was required to defend a motion for off-premises production of documents.

Appellant's argument on this point proceeds along two lines. First, the district court invaded the province of the Executive and Legislative Departments of the United States by substituting its judgment for that of the District Enforcement Director as to where the documents should be produced. This the district court had no power to do. Such an order cannot be said to be "due process" of law. Thus the district court exceeded its jurisdiction in a constitutional sense. The principle relied upon is exemplified by *Perkins v. Lukens Steel Co.,* 310 U.S. 113, 84 L. ed. 1108, in which the Supreme Court said, by Mr. Justice Black,

> "The case before us makes it fitting to remember that 'The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them.'"

Likewise, in *Keller v. Potomac Electric Power Co.,* 261 U.S. 428, 67 L. ed. 731, the Supreme Court held

that the judicial power of the United States does not extend to administrative issues.

Here the Seattle District Enforcement Director determined that he wanted appellant's books and records produced at the Seattle District Office of Price Stabilization. To implement this decision he issued an administrative subpoena (albeit an invalid one as appellant contends) for the production of those records at that office. This failing, he sought an order from the Court below *enforcing his subpoena.* (Tr. 3-5). Instead of granting the relief sought the court below substituted its judgment for that of the Director, in an effort to cure a subpoena invalid when issued, and ordered inspection at a place other than that determined by the Director to be suitable. In 50 App. USCA 2155(a) the power to make this determination is vested in the executive department of the government, not the judicial department.

Sound policy dictates that this objection to the action of the District Court be sustained. A long judicial history attends the efforts of private citizens to force government agencies to observe the "fair play" requirements placed by the Constitution on matters of procedure. An administrative agency should be forced carefully to consider *prior* to the issuance of a subpoena or other demand what its impact will be upon the person affected. If the agency can proceed without such consideration and

make unreasonable demands in utter disregard of the requirements of law as to the extent to which a citizen may be unnecessarily burdened, always knowing that the only penalty will be a softening of the terms of the demand by a court *if the citizen can afford to seek court relief,* then there is no effective control over abuse by the agency of its power. Here the Director had alternative methods of procedure available to him. He could have served an inspection authorization upon appellant and, in the event of non-compliance, sought court enforcement of the authorization under 50 App. USCA 2156 (a). Such a procedure was authorized under similar provisions of the Emergency Price Control Act by this court in *G. H. Love, Inc. v. Fleming,* (C.A. 9, 1947), 161 F. (2d) 726. Or he could then have chosen the procedure he followed in this case. Having made his choice he should be forced to justify it on its own terms, not in terms of the other alternative. The district court, having decided that off-premises inspection was unreasonable, should have denied the relief sought and dismissed appellee's motion for enforcement, leaving appellee to its other remedies. As it is, appellant has been forced into court to defend the demand for off-premises inspection which the court below has concluded was unreasonable when appellant might have acceded to a reasonable demand for on-premises inspection. It should be noted that it was not until appellee sought

to remove records from appellant's premises for photostating that appellant resisted appellee's demands (Tr. 24, 26). The requirements of "fair play" inherent in the due process clause do not permit abuses such as this by federal agencies. Constitutional guarantees are flexible enough to meet new and oppressive procedures devised by governmental officials.

2. The terms of the order exceeded the scope of the pleadings, prayer and evidence before the court.

In this case the Seattle District Enforcement Director demanded off-premises production of documents by a subpoena *duces tecum*. That failing, the United States moved in the court below for enforcement, praying "that an Order be issued directing the respondent to appear forthwith at the Seattle District Office of Price Stabilization and give testimony, and produce documents described in the Subpoena Duces Tecum attached" to the motion (Tr. 5). The district court then granted an order authorizing on-premises inspection (Tr. 35-37). Appellant contends that the order of the court below exceeded the scope of the pleadings and prayer in the case and should be reversed. 50 App. USCA 2155(a), under which appellee expressly stated it was seeking relief (Tr. 3, 46), provides in part as follows:

> "* * * In case of contumacy by, or refusal to obey a subpena served upon, any person

> referred to in this subsection, the District Court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; * * *"

It should be noted that the grant of jurisdiction extends only to the issuance of an order requiring appellant to appear and give testimony and produce the documents called for.

50 App. USCA 2156(a) provides as follows:

> "Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond."

50 App. USCA 2156(b) provides that the district courts of the United States shall have jurisdiction over any such actions.

50 App. USCA 2156(a) authorizes the court below, *in an appropriate proceeding,* to require an on-premises inspection, since Section 2155 authorizes on-premises inspections. In *G. H. Love v. Fleming*, supra, the district court had granted an order en-

forcing an "inspection requirement" of the O.P.A. The respondent there appealed, contending that the O.P.A. had the authority to inspect its records by a subpoena *duces tecum* only. The Circuit Court affirmed, holding that an inspection requirement could be enforced under that section of the Emergency Price Control Act (50 App. USCA 925 (a)) that corresponded to 50 App. USCA 2156(a). There, however, the Administrator began with an inspection requirement and sought enforcement thereof. In the instant case the O.P.S. began with a subpoena *duces tecum* requiring off-premises production and the court has granted an order enforcing on-premises inspection.

In *Porter v. Clayton Packing Co.,* supra, the Court ordered on-premises inspection when enforcement of a subpoena was requested by the O.P.A. The question here raised was not presented to the Court in that case.

In *Cudmore v. Bowles* (C.A.D.C., 1944), 145 F. (2d) 697, the Circuit Court upheld an order in the alternative of the District Court requiring respondent either to comply with the subpoena or to permit on-premises inspection. There it appears that the Administrator sought relief in the alternative.

Appellant has found no case where the question here presented has been ruled upon. Where the O.P.S. has chosen to move under one section of the Act, it

should not be granted relief under another section of the Act. Congress must be assumed to have had a reason for authorizing different procedures for obtaining court orders for on-premises and off-premises inspection, and that statutory distinction between procedures should be observed. Clearly the order of the District Court went beyond both statutory authority and the scope of the case before it.

3. The order authorizes unreasonable harassment.

We have heretofore discussed matters of law—whether appellee has conformed to the conditions expressly required by statute for the issuance of a subpoena; whether on the grounds of general doctrines of law relating to subpoenas appellee is entitled to enforcement, whether the order of the Court was reasonable and proper.

It is appropriate as well to consider the past relationship between appellant and appellee and to attempt to arrive at an appreciation of the equities as between these parties. It is appropriate that this court assure itself that appellee has by its actions proved itself worthy of an enforcement order.

The cases lay down the rule that the courts will not countenance undue harassment. In *Fleming v. Fossati* (1947, Ore.), 177 P.(2d) 425, the suit was to compel inspection of respondent's books and records. Respondent showed that her books and rec-

ords had already been inspected three times, and that further inspection would cause great injury. The enforcement was declined and the court said:

> "Ordinarily, it is not essential to inspection that there be a showing of probable cause on the part of the administrative agency * * * but we think the lack of such showing, if, in fact, several other inspections have been made, should cause a court of equity to be reluctant to grant such extraordinary relief."

In *Porter v. Clayton Packing Co.,* (D.C.E.D.N.Y., 1946), 65F. Supp. 825, the court declined to enforce a subpoena which would have removed so much of respondent's records as to necessitate a closing down of respondent's plant. The court, instead, granted an order allowing an inspection according to reasonable terms.

The affidavit of Bishop (Tr. 21) shows on how many occasions agents of appellee have been granted access to appellant's books and records. Indeed, such access was never refused and appellant resisted only when appellee made demand to remove all records for photostating or microfilming. It is especially noteworthy that for a period of ten days, agents Colman and Apstein investigated appellant's books and records in an office on appellant's premises, furnished by appellant. Colman states in his affidavit that he and Apstein investigated only invoices for the base period (Tr. 12) and for the month thereafter. This consumed ten days. Yet the

affidavit of Knudsen (Tr. 27), one of appellant's attorneys, shows that he reviewed all base period invoices for the purpose of determining maximum prices, in a period of approximately two hours.

The affidavit of Bishop shows the extent of records made available to petitioner's agents. It appears unreasonable to assume that in a ten-day period two of appellee's agents devoted themselves solely to the review of the records of five weeks, covering approximately 47 car sales (Tr. 26).

Appellant submits that appellee has had ample opportunity to review pertinent books and records and that any further review would be an unreasonable burden upon appellant who had, prior to this proceeding, offered full cooperation to appellee.

The time limit set up by the subpoena is a further indication of the unreasonable nature of appellee's demand. The subpoena, dated March 25, 1952, required the testimony on March 28, 1952. The courts have been aware of this element, as witness *Pinkus v. Porter* (C.A. 7, 1946), 155 F.(2d) 90, where one week was granted, and *Cudmore v. Bowles,* supra, where over a month was granted to respondent in which to produce certain invoices.

Appellant realizes that as of the date of the hearing, the time element was not the issue it was on March 28, 1952, but appellant points out this unduly short time limit illustrates appellee's efforts to harass appellant.

The affidavit of Colman states, at paragraph 4, that his check of invoices for one month after the base period shows a "consistent and continued practice * * * of charging in excess of maximum ceiling prices" (Tr. 12). The affidavit of Malone denies that this is so (Tr. 25). But, what is important about this allegation is that it is totally irrelevant to the subpoena requesting information relative to SR 5 and CPR 83. The base period ended January 26, 1951. One month after the base period brings us to February 26, 1951. SR 5 did not go into effect until March 2, 1951, and CPR 83 until October 15, 1951. Therefore, this allegation of Colman can have no bearing upon the subpoena.

Presuming the subpoena to relate only to SR 5 and CPR 83, this accusation of Colman, wholly irrelevant to the subpoena, must be construed as an effort, by wholly unsupported allegation, to impute to appellant violations of the Act. The alleged violations were presumably brought to the attention of the court in order to influence the court to grant the enforcement order. Such unwarranted prejudicial conduct should not be countenanced. The inclusion of this irrelevant and immaterial allegation must be deemed but another example of appellee's unwarranted and unseemly harassment of appellant.

4. The cumulative effect of the administrative improprieties stated above is such that the district court committed reversible error in granting the enforcement order.

In the words of Professor Gellhorn, an eminent authority upon the subject of administrative law:—

> "Where courts are willing to undertake an evaluation of a whole case, rather than a single part of it, the advocate must be sensitive to the cumulative effect of errors. It is sometimes possible, by tracing the entire story of a proceeding, to show a vitiating unfairness, even though one cannot with assurance rest his finger on a particular element of the unfairness and say, '*There* is the vice.' It is the atmosphere of the whole which establishes the unfairness of its several parts. The effective advocate will exercise self-restraint in arguing that there were errors in the administrative process, because the presentation of numerous objections of a frivolous character will cast a shadow over whatever meritorious contentions may remain. The point to remember is, simply, that procedural criticisms, which standing alone might be unpersuasive, acquire force when they are linked with others." *Gellhorn, Administrative Law,* 442 (1947 ed.).

Here is a case where O.P.S. investigators apparently intending to make an exhaustive compliance investigation, after a series of prior investigations and price checks, were admitted to business premises and falsely represented that they were gathering data for a revision of the applicable regulation or for a Congressional hearing (Tr. 22-23). After full and complete access to appellant's records for ten

days, the investigators unlawfully demanded to be permitted to remove all of appellant's business records and photostat them. An O.P.S. attorney subsequently stated to appellant's counsel that the investigation concerned only pricing under SR 5 to GCPR, when in fact appellee's own purported "definition of the scope and purpose of the inquiry" included pricing under CPR 83 (Tr. 27). Failing of its plans to remove and photograph appellant's records, the agency served upon an officer of appellant a subpoena in sweeping terms, compliance with which would practically halt its normal business operations. Since appellant had not yet been informed of the scope and purpose of the inquiry, it did not comply with what it considered an unlawful demand. The agency then went to the Federal District Court seeking judicial sanction of its action. Learning at that stage that appellant was aware of its statutory rights, the agency, belatedly, at 11:00 o'clock A. M. on the day of the hearing, disclosed that hidden in a filing cabinet was a printed administrative form purporting to satisfy the requirement of a prior definition of scope and purpose. The agency itself alleged conflicting dates of execution (Tr. 28-33, 51-52). The so-called "definition of scope and purpose" is as broad as the statute relied upon, and refers to an "attached file" for further amplification. The court, pressed for time because of other urgent judicial business, stating that "a

showing" had been made, granted the request of the agency for enforcement, disregarding appellant's objections. Appellant submits that a federal agency which has arrogated to itself powers beyond its statutory authority, which has misrepresented and hidden its purpose, which has insisted upon an authoritarian right to inquire into all phases of the business of a private citizen whether relevant or not to the statute of its creation, is guilty of administrative improprieties the cumulative effect of which colors the whole proceeding to such an extent that the district court must be held to have committed reversible error in acceding to the request for enforcement. Sound policy requires that the government employ a standard of procedural ethics at least equal to that required of private individuals.

> "If we say with Mr. Justice Holmes, 'Men must turn square corners when they deal with the Government,' It is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens." *Farrell v. Placer County* (Cal. 1944), 145 P(2d) 570, 572.

V. CONCLUSION

In the light of the foregoing, appellant submits that the administrative subpoena of March 26, 1952, was invalid when issued and that it was erroneous for the district court to grant an order of

enforcement. The district court committed further error in the excessive scope of the relief granted, measured against the prayed-for relief and the applicable statutes and regulations, and in its failure to designate documents authorized to be inspected with that degree of particularity required by law.

The cumulative effect of these errors and the undue and unreasonable harassment of appellant by appellee provides ample reason for the reversal of the Order Enforcing Administrative Subpoena, of April 16, 1952.

Appellant, therefore, prays that the Order Enforcing Administrative Subpoena, of April 16, 1952, be vacated and set aside; and that enforcement of the administrative subpoena of March 26, 1952, be denied.

Respectfully Submitted,

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